

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 661 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAK JAWAHAR DAFTARI

Versus

STATE OF GUJARAT

Appearance:

Miss Khyati P. Hathi for Mr. P.V. Hathi for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
SERVED for Respondent No. 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 14/08/97

ORAL JUDGEMENT

Learned counsel Miss Khyati P. Hathi who appears for the learned counsel Mr. P.V. Hathi for the petitioners, placing reliance upon this High Court pronouncement in Janardan Dahyabhai Patel and others v. State of Gujarat, 1996 (3) GCD, 149 (Gujarat), urges that the present petition requires a full recognition and that the

impugned orders are required to be quashed and set aside and the revenue entries made in the revenue records should be maintained as legal and valid entries.

It appears that the petitioners and the respondent No.3 had purchased four pieces of agricultural lands from the respondents No.4 to 7 under various transactions. The mutation entries Nos. 281 to 284 came to be posted in the revenue record somewhere in the month of November 1981. Later on these mutation entries came to be certified by the Revenue Circle Inspector on 19.12.1981. It appears that after a lapse of a period of about one year or more the Collector, Rajkot preferred to issue necessary show cause notices to the petitioners calling upon them to show cause as to why the abovesaid entries should not be deleted from the revenue records. The Collector, Rajkot had issued these notices under the purported exercise of powers under Rule 108 (6) of the Gujarat Land Revenue Rules, 1972. After hearing the petitioners, the Collector, Rajkot has taken the view in his orders dated September 2, 1983 that the abovesaid entries were liable to be deleted from the revenue records. He, therefore, had ordered accordingly. The petitioners thereafter had carried the matter before the Government. The appeal filed by the petitioners came to be heard, decided and dismissed by the Secretary (Appeals) Revenue, Gujarat State, under the orders dated January 15, 1985. The said orders confirming the earlier orders of the Collector, Rajkot have been brought in challenge by the petitioners in the present petition before me.

The view taken by the Collector which ultimately came to be upheld and confirmed by the Secretary (Appeals) is that the above-said transactions were not in consonance with the law and that as the transfers were in favour of the persons who were not holding the land within the State of Gujarat and were, therefore, are non-agriculturists, land could not have been transferred in their favour.

The orders impugned are being challenged by the learned counsel Miss Hathi for the petitioners firstly on the ground that the powers under section 108 (6) of the Gujarat Land Revenue Rules, 1972 could not have been exercised by the Collector, Rajkot after such a pretty long time. The second contention coming from the learned counsel for the petitioners is that it was at any rate not open for the Collector, Rajkot, to say in the R.T.S. proceedings that the transfers were bad and were not in consonance with certain provisions.

In support of the abovesaid twin contentions, the learned counsel Miss Hathi places reliance upon the pronouncement of this Court in the case of Janardan Dahyabhai Patel (supra). This decision would go to assist the learned counsel for the petitioners in both the respects. The decision firstly says that the revisional jurisdiction under Rule 108 (6) of the Gujarat Land Revenue Rules could not be exercised after expiry of a reasonable period which ordinarily should be three months. It is not in dispute before me that the abovesaid entries were sought to be taken into suo motu revision after a period of about one year. The petition, therefore, requires to be allowed on this count. The orders under challenge would go to show that the view of the Collector came to be confirmed by the Secretary (Appeals) by saying that the above-said transactions were bad in law because the transfer of the lands in question can be said to be the transfers in favour of the non-agriculturists. The orders have also taken the view that the abovesaid transactions were in violation of Section 54 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949. But the decision in Janardan Dahyabhai Patel's case (supra) makes it abundantly clear that in RTS proceedings such question cannot be examined and decided.

Therefore, taking into consideration the say of this Court in the afore-mentioned decision, the petition requires to be granted and rule requires to be made absolute. I order accordingly and hence the Rule is made absolute with no order as to costs. The orders impugned therefore shall stand quashed and set aside and the mutation entries in question shall stand validated and maintained in the revenue records.

(ers)